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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 ROBERT COTA, JR. (10),

15 Defendant.

CASE NO. 11CR4153WQH

ORDER

16 HAYES, Judge:

17 The matter before the Court is the motion to suppress statements filed by Defendant
18 Robert Cota, Jr. (ECF No. 137-2).

19 **FACTUAL BACKGROUND**

20 On September 15, 2011, a federal grand jury in the Southern District of California
21 returned an indictment charging the Defendant with conspiracy to distribute methamphetamine
22 in violation of 21 U.S.C. §§ 841(a)(1) and 846.

23 On September 22, 2011 at approximately 6 a.m., Defendant was arrested pursuant to
24 an arrest warrant. At approximately 7:15 a.m., Defendant was interviewed by Special Agents
25 of the Department of Homeland Security, Immigration and Customs Enforcement. After
26 obtaining the Defendant's biographical information, the agent read the Defendant his *Miranda*
27 rights and handed the Defendant a pre-printed *Miranda* waiver form. Defendant told the agent
28 that he could not read. The agent took the form back and read the form to the Defendant.
Defendant told the agent that he understood his rights and was willing to be interviewed. At

1 approximately 8:25 a.m., Defendant signed a written *Miranda* waiver form. (ECF No. 168-1).
2 Defendant's statement was videotaped. Due to technical malfunction, no audio was captured
3 on the recording. The video shows the entire interview including, the positioning of the agents
4 and the Defendant, the Defendant signing the *Miranda* waiver form, and the conduct of the
5 agents and the Defendant throughout the interview.

6 **CONTENTIONS OF THE PARTIES**

7 Defendant contends that the Government must satisfy its burden to demonstrate that
8 sufficient *Miranda* warnings were given, and that he knowingly and intelligently waived his
9 rights. Defendant asserts that his statements were not voluntary. Defendant asserts that the
10 Court should conduct an evidentiary hearing to determine whether his statements should be
11 admitted into evidence.

12 The Government contends that Defendant made a knowing and voluntary waiver of his
13 *Miranda* rights and that his post-arrest statements were otherwise voluntary. The Government
14 asserts that the Court should deny the Defendant's motion to suppress without an evidentiary
15 hearing on the grounds that the Defendant has not alleged any facts that would support
16 suppression of his statements.

17 **APPLICABLE LAW**

18 In order for inculpatory statements made by a defendant during custodial interrogation
19 to be admissible in evidence, the defendant's "waiver of *Miranda* rights must be voluntary,
20 knowing, and intelligent." *United States v. Binder*, 769 F.2d 595, 599 (9th Cir. 1985). In order
21 to be knowing and intelligent, "the waiver must have been made with full awareness of both
22 the nature of the right being abandoned and the consequences of the decision to abandon it."
23 *Moran v. Burdine*, 475 U.S. 412, 421 (1986). There is a presumption against waiver. *North*
24 *Carolina v. Butler*, 441 U.S. 369, 374-75 (1979). The Government bears the burden of
25 establishing the existence of a valid waiver of *Miranda* rights. *Id.* The validity of a waiver
26 depends upon the particular facts and circumstances of the case, including the background,
27 experience and conduct of the defendant. *Edwards v. Arizona*, 451 U.S. 477, 482 (1981).
28 "Several factors to consider are (i) defendant's mental capacity; (ii) whether the defendant

1 signed a written waiver; (iii) whether the defendant was advised in his native tongue or had a
2 translator; (iv) whether the defendant appeared to understand his rights; (v) whether the
3 defendant's rights were individually and repeatedly explained to him; and (vi) whether the
4 defendant had prior experience with the criminal justice system." *United States v. Crews*, 502
5 F.3d 1130, 1140 (9th Cir. 2007).

6 "In evaluating voluntariness, the 'test is whether, considering the totality of the
7 circumstances, the government obtained the statement by physical or psychological coercion
8 or by improper inducement so that the suspect's will was overborne.'" *United States v. Male*
9 *Juvenile*, 280 F.3d 1008, 1022 (9th Cir.2002) (quoting *Derrick v. Peterson*, 924 F.2d 813, 817
10 (9th Cir.1991)).

11 **RULING OF THE COURT**

12 In this case, the record contains the video showing the actions of the agents and the
13 Defendant throughout the interview and the *Miranda* waiver form signed by the Defendant.
14 This evidence is sufficient to carry the Government's burden to show that the Defendant was
15 informed of his *Miranda* rights and the validity of his waiver. The video shows the Defendant
16 sitting at a desk with the two agents sitting on chairs in the room. The video shows the
17 Defendant signing the *Miranda* waiver form, the agents questioning the Defendant, and the
18 Defendant responding. Defendant has not submitted an affidavit or otherwise designated any
19 facts that would contest the facts set forth by the Government or support his motion to suppress
20 statements on the grounds of a *Miranda* violation. At this stage in the proceedings, the Court
21 will deny the motion to suppress statements with leave to refile in order to set forth "specific
22 facts sufficient to require the granting of the Defendant's motion." *United States v. Batiste*,
23 868 F.2d 1089, 1093 (9th Cir. 1989). *See also* Local Rule 47.1(b)(4).

24 IT IS HEREBY ORDERED that the motion to suppress statements filed by Defendant
25 (ECF No. 137-2) is denied without prejudice.

26 DATED: November 13, 2012

27 
28 **WILLIAM Q. HAYES**
United States District Judge